

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0608
Sales and Use Tax
For the Years 1999-2000**

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ISSUE

I. Sales and Use Tax- Imposition of Sales Tax on Leases

Authority: IC 6-2.5-2-1, IC 6-2.5-4-10, IC 6-8.1-5-1 (b), IC 6-2.5-5-8, 45 IAC 2.2-4-27.

The taxpayer protests the imposition of the sales tax.

II. Sales and Use Tax-Imposition of Use Tax

Authority: IC 6-2.5-3-2.

The taxpayer protests the imposition of the use tax.

III. Sales and Use Tax-Services

Authority: IC 6-2.5-2-1, IC 6-2.5-3-2, IC 6-2.5-4-1, IC 6-2.5-1-2, IC 6-2.5-1-1.

The taxpayer protests the imposition of use tax on invoices it contends represent service charges.

IV. Sales and Use Tax-Reimbursement of Expenses

Authority: to IC 6-2.5-3-2.

The taxpayer protests the assessment of tax on certain transactions that it contends were in actuality the reimbursement of expenses.

STATEMENT OF FACTS

The taxpayer is an out-of-state management company operating a golf course in Indiana. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department,"

assessed additional sales and use tax. The taxpayer protested this assessment and a telephone hearing was held. This Letter of Findings results.

I. Sales and Use Tax- Imposition of Sales Tax on Leases

DISCUSSION

Indiana imposes a sales tax on retail transactions made in Indiana. Persons who acquire tangible personal property in a retail transaction are liable for the tax. Retail merchants collect the tax and remit it to the state. IC 6-2.5-2-1. Persons renting tangible personal property are retail merchants making a retail transaction. IC 6-2.5-4-10. Since Indiana imposes a sales tax on retail transactions and rentals of tangible personal property constitute retail transactions, Indiana imposes the sales tax on rentals of tangible personal property. The sales tax on rentals is to be collected and remitted to the state in the same manner as any other imposition of sales tax. All assessments made by the department are presumed to be correct. Taxpayers bear the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer rents golf carts, golf clubs, and club carts without collecting and remitting sales tax on the rentals. The department assessed sales tax on these rentals and the taxpayer protested this assessment. The taxpayer contends that it need not collect and remit sales tax on the rentals because it paid sales tax when it purchased the property for lease. The taxpayer bases this contention on the language of the regulation concerning the imposition of sales tax on rental transactions found at 45 IAC 2.2-4-27 as follows:

- (a) In general, the gross receipts from renting or leasing tangible personal property are taxable. This regulation only exempts from tax those transactions which would have been exempt in an equivalent sales transaction.
- (b) Every person engaged in the business of the rental or leasing of tangible personal property, other than a public utility shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax on the amount of the actual receipts from such rental or leasing.
- (c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.

The taxpayer argues that since these regulations start with the phrase, "In General," most taxpayers operate in this manner, but some taxpayers do not. The phrase, "in general" means that there are acceptable exceptions to this normal behavior. The taxpayer contends that it availed itself of one of the exemptions by paying the sales tax on the purchase of the property to be rented and not collecting sales tax when it rented the golf clubs, etc. The taxpayer argued that it could choose the more convenient method of paying the sales tax on the property at the time of

purchase for leasing. The taxpayer's position is not supported by the law and regulations. They specifically impose the sales tax on leases of tangible personal property unless the transaction qualifies for a stated exemption. No exemption for "convenience" is found in the law. Further, IC 6-2.5-5-8 provides an exemption from the sales tax for property acquired for leasing in the course of a taxpayer's business. Therefore, in this situation, the taxpayer should not have paid the sales tax when it purchased the golf clubs, etc. for rental. It should have collected and remitted the sales tax when it leased the property. The department gave the taxpayer credit for the sales taxes it paid when it purchased the property.

The taxpayer argues further that its understanding of the law and its duties under the law was affirmed through communication with a departmental employee. It is not possible at this point for the department to know the totality of the taxpayer's communications with the department's employee several years ago. The department offers a procedure for obtaining a ruling on the tax consequences of a particular situation. The taxpayer did not avail itself of this process. Therefore, the taxpayer's documentation of communication with the department's employee is not adequate to sustain its burden of proving that the tax was applied inappropriately.

FINDING

The taxpayer's protest is denied.

II. Sales and Use Tax-Imposition of Use Tax

DISCUSSION

Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana on which no sales tax was paid at the time of purchase. IC 6-2.5-3-2. The department assessed use tax on top dressing sand, reference numbers 92276 and 99078 on page 13 of the audit. The taxpayer presented invoices indicating that sales tax was paid to the vendor on the top dressing sand.

The department also assessed use tax on the taxpayer's use of property such as clothing for staff and scorecards. The taxpayer protests this assessment arguing that it was the retail vendors' responsibility to collect and remit the tax. Since the vendors did not collect the tax and the vendors are all still in business, the department should collect any tax due from the vendors.

At the time of the audit, the taxpayer was subject to the imposition of the use tax on the tangible personal property it used in Indiana if it had not paid sales tax on it at the time of purchase. The department's proper remedy at this point is to assess and collect the use tax from the taxpayer rather than chasing down vendors who failed to collect the tax for some unknown, and possibly valid, reason.

FINDING

The taxpayer's protest to the assessment of use tax on reference numbers 92276 and 99078 is sustained. The remainder of the taxpayer's protest is denied.

III. Sales and Use Tax-Services

DISCUSSION

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. The use of tangible personal property acquired in a retail transaction is subject to the use tax unless the sales tax has been paid. IC 6-2.5-3-2. A retail transaction is defined generally as the acquiring and subsequently selling of tangible personal property. IC 6-2.5-4-1. Except for certain enumerated services, sales of services are generally not retail transactions and are not subject to sales or use tax. There are two instances when an otherwise nontaxable sale or use of a service is subject to the appropriate tax. The first is when the services are performed with respect to tangible personal property being transferred in a retail transaction and the services take place prior to the transfer of the tangible personal property. IC 6-2.5-4-1(e). The second is when the services are part of a retail unitary transaction. IC 6-2.5-1-2. A unitary transaction is defined as a transaction that includes the transfer of tangible personal property and the provision of services for a single charge pursuant to a single agreement or order. IC 6-2.5-1-1.

The taxpayer protests the imposition of use tax on parking lot bumpers. The taxpayer provided an invoice indicating payment to a company that specializes in parking lots. The invoice indicates that among the products it sells are parking lot bumpers. The invoice indicates that the taxpayer paid \$824.00 to the company to “deliver and install 32 parking bumpers pinned in asphalt.” The taxpayer contends that the charge on that invoice represented only the nontaxable services of delivery and installation. The taxpayer was unable to supply a separate invoice or any other evidence that the parking bumpers were purchased separately and delivered prior to the delivery and installation services represented by the invoice. In this case, the services were performed prior to the transfer of the parking lot bumpers to the taxpayer. Therefore, assessment of use tax on the amount of the invoice is proper.

The taxpayer also protests the assessment of use tax on audit page 13 reference numbers 9850, 9890, and 8790 representing month end adjusting entries for expensed items. The taxpayer contends that these assessed amounts actually represent exempt labor charges. The taxpayer did not produce documentation sufficient to sustain its burden of proving that the audit was incorrect and the charges were actually for labor charges.

FINDING

The taxpayer’s protest is denied.

IV. Sales and Use Tax-Reimbursement of Expenses

DISCUSSION

The department also assessed use tax on the taxpayer’s lease of items such as tractors and mowers from another corporation. The taxpayer contends that these transactions were in actuality nontaxable reimbursals of expenses. The taxpayer originally purchased the equipment

and paid the sales tax on the equipment. After the opening of the golf course, the taxpayer set up the leasing corporation as a holding company and transferred the tractor and related items to it. The taxpayer directs the movements of the equipment, pays insurance and wages of the leasing corporation's employees. The two corporations are owned by the same persons. The purpose of the equipment transfer was to ease accounting procedures. The taxpayer contends that the payments are actually reimbursals of the leasing corporation's expenses and depreciation rather than leases. The department disagrees. The taxpayer receives the benefits of the two separate corporations and clearly set up the situation as a leasing situation. Therefore, the taxpayer owes use tax on the leases pursuant to IC 6-2.5-3-2.

FINDING

The taxpayer's protest is denied.

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